

Notes

1. This is a compilation of the *Misuse of Drugs Act 1981* and includes the amendments effected by the other Acts referred to in Part I of the following Table and by the Orders in Council referred to in Part II of the following Table.

Table of Acts and Orders in Council

PART I — ACTS

| Act | Number and Year | Assent | Commencement | Miscellaneous |
|--|-----------------|------------------|---|--|
| <i>Misuse of Drugs Act 1981</i> | 66 of 1981 | 23 October 1981 | 1 September 1982 (see <i>Gazette</i> 20 August 1982 p.3250) | |
| <i>Misuse of Drugs Amendment Act 1990</i> | 50 of 1990 | 4 December 1990 | 4 December 1990 | |
| <i>Conservation and Land Management Amendment Act 1991, section 57</i> | 20 of 1991 | 25 June 1991 | 23 August 1991 (see <i>Gazette</i> 23 August 1991 p.4353) | |
| <i>Poisons Amendment Act 1994, section 11</i> | 12 of 1994 | 15 April 1994 | 27 May 1994 (see <i>Gazette</i> 7 May 1994 p.2205) | |
| <i>Acts Amendment (Public Sector Management) Act 1994, section 3 (2)</i> | 32 of 1994 | 29 June 1994 | 1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948) | |
| <i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i> | 73 of 1994 | 9 December 1994 | 9 December 1994 | |
| <i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994, Part 15</i> | 92 of 1994 | 23 December 1994 | 1 January 1995 (see section 2) | |
| <i>Misuse of Drugs Amendment Act 1995</i> | 44 of 1995 | 18 October 1995 | 16 August 1996 (see section 2 and <i>Gazette</i> 16 August 1996 p.4007) | Section 16: transitional ² |
| <i>Poisons Amendment Act 1995, section 43</i> | 48 of 1995 | 6 November 1995 | 20 March 1996 (see <i>Gazette</i> 19 March 1996 p.1203) | |
| <i>Misuse of Drugs Amendment Act 1998</i> | 3 of 1998 | 26 March 1998 | 26 March 1998 (see section 2) | |
| <i>Statutes (Repeals and Minor Amendments) Act 2000, section 27</i> | 24 of 2000 | 4 July 2000 | 4 July 2000 (see section 2) | |
| <i>Criminal Property Confiscation (Consequential Provisions) Act 2000, section 5</i> | 69 of 2000 | 6 December 2000 | Operative 1 January 2001 (see section 2 and <i>Gazette</i> 29 December 2000 p.7903) | Sections 5-11: savings ³ |

PART II — ORDERS IN COUNCIL

| Orders | Gazettal | Commencement | Miscellaneous |
|--------|----------|--------------|---------------|
|--------|----------|--------------|---------------|

| Orders | Gazettal | Commencement | Miscellaneous |
|---|----------------------------|------------------|---------------|
| <i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 1990</i> | 30 November 1990 p.5937 | 30 November 1990 | |
| <i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 1991</i> | 29 November 1991 pp.6040-1 | 29 November 1991 | |
| <i>Misuse of Drugs (Amounts of Prohibited Drugs) Order 1994</i> | 22 March 1994 p.1245 | 22 March 1994 | |

2 Section 16 of the *Misuse of Drugs Amendment Act 1995* (Act No. 44 of 1995) reads as follows —

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16. Transitional

- (1) The principal Act as amended by this Act applies to and in relation to things seized before the commencement of this Act and in particular a direction may be given under section 27 of the principal Act as amended by this Act in respect of any such thing.
- (2) Anything done by an analyst or botanist under the principal Act before the commencement of this Act in relation to any thing seized before the commencement of this Act shall, for the purposes of the principal Act as amended by this Act, be taken to be a thing done by an approved analyst or an approved botanist.
- (3) A certificate given by an analyst or botanist under the principal Act before the commencement of this Act continues to have effect after the commencement of this Act as if the certificate had been given in accordance with the principal Act as amended by this Act.

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3 Sections 6-11 of the *Criminal Property Confiscation (Consequential Provisions) Act 2000* (No. 69 of 2000) reads as follows —

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6. Applications to court under repealed law — savings

If an application made to a court under the repealed Act or the repealed Part was not withdrawn, discontinued or otherwise finally determined before the commencement of this Act, the application may be dealt with on and after that commencement as if the repealed Act or the repealed Part had not been repealed.

7. Court orders under repealed law — savings

- (1) If an order made by a court under the repealed Act or the repealed Part was in force immediately before the commencement of this Act, the order has effect on and after that commencement, and may be executed, varied, discharged, set aside or appealed against, as if the repealed Act or repealed Part had not been repealed.
- (2) If an interstate forfeiture order or interstate restraining order was registered under the repealed Act, and its registration was not cancelled before the commencement of this Act, Part 10 of the *Criminal Property Confiscation Act 2000* applies, on and after that commencement, to the order and to any charge created under the repealed Act on the property to which the order relates, as if the order were an interstate confiscation order or interstate freezing

order registered under section 118 of the *Criminal Property Confiscation Act 2000* and as if the charge had been created under section 123 of the *Criminal Property Confiscation Act 2000*.

8. Holding orders and embargo notices — savings

- (1) If a holding order or an embargo notice was in force under the repealed Part immediately before the commencement of this Act, the holding order or embargo notice has effect on and after that commencement, and the repealed Part continues to apply to the holding order or embargo notice, as if the repealed Part had not been repealed.
- (2) Without limiting subsection (1), if, immediately before the commencement of this Act, a person was entitled under section 19 of the *Misuse of Drugs Act 1981* to apply for an order in respect of the property to which a holding order or embargo notice relates, the person may apply for the order after that commencement, and the application may be dealt with, as if the repealed Part had not been repealed.
- (3) However, subsection (2) does not entitle the person to apply for the order more than 21 days after the date of the holding order or embargo notice.

9. Warrants issued under repealed law — savings

If, immediately before the commencement of this Act, a warrant issued under the repealed Act or the repealed Part was capable of execution to any extent, then the warrant may be executed on and after that commencement, to that extent, as if the repealed Act or the repealed Part had not been repealed.

10. Property subject to a forfeiture order

- (1) This section applies to property for which a forfeiture order was made under the repealed Act if —
 - (a) the appeal period for the forfeiture order had not ended before the commencement of this Act; or
 - (b) if the appeal period has ended (whether before or after the commencement of this Act), but the forfeiture order has not been discharged, and the property was not disposed of or otherwise dealt with under section 11(5) of the repealed Act before that commencement.
- (2) Sections 11(3), 11(4), 11(6), 12, 13 and 14 of the repealed Act continue to apply in relation to the forfeiture order and the property as if the repealed Act had not been repealed.
- (3) If the appeal period for the forfeiture order has not ended, sections 89, 90, 92 and 94 of the *Criminal Property Confiscation Act 2000* apply to the property as if it were subject to a freezing order under that Act.
- (4) If the appeal period for the forfeiture order has ended, and the order has not been discharged —
 - (a) sections 89, 90, 92 and 94 of the *Criminal Property Confiscation Act 2000* apply to the property as if it had been confiscated under that Act; and
 - (b) if the property has vested in the Crown, whether under clause 11(3)(b) or under the repealed Act, the property is to be disposed of as if it had been confiscated under the *Criminal Property Confiscation Act 2000*.

- (5) The following are to be paid into the Confiscation Proceeds Account established under section 130 of the *Criminal Property Confiscation Act 2000* —
- (a) subject to section 11(4) of the repealed Act as continued by subsection (2), any money vested in the Crown under section 11 of the repealed Act that has not been disposed of or otherwise dealt with under the repealed Act;
 - (b) any proceeds obtained by the Crown after the commencement of this Act from the disposal of property under the repealed Act;
 - (c) any proceeds obtained from the disposal of property under subsection (4)(b).
- (6) Nothing in this section limits the generality of section 7(1) in its application to a forfeiture order.

11. Real property subject to forfeiture order

- (1) If property to which section 10 applies is land registered under the *Transfer of Land Act 1893*, then, without limiting the application of section 10 to the property, this section also applies to the property.
- (2) If the property has not vested in the Crown under section 11 of the repealed Act, the Director of Public Prosecutions may lodge with the Registrar of Titles a memorial of the forfeiture order in a form approved by the Registrar.
- (3) When a memorial is lodged under subsection (2) —
- (a) the Registrar of Titles is to register the memorial;
 - (b) on the registration of the memorial, the property vests in the State of Western Australia free from all interests, whether registered or not, including trusts, mortgages, charges, obligations and estates (except rights-of-way, easements and restrictive covenants);
 - (c) any caveat in force in relation to the property is taken to have been withdrawn; and
 - (d) the title in the property passes to the State.
- (4) When a memorial is lodged under subsection (2) then, in addition to registering the memorial, the Registrar of Titles is to —
- (a) register the State of Western Australia as the proprietor of the property; and
 - (b) endorse the certificate of title of the property to the effect that, when the memorial was registered, the property ceased to be subject to or affected by any interests recorded on the certificate of title, including caveats, mortgages, charges, obligations and estates (except rights-of-way, easements and restrictive covenants) to which it was subject immediately before the registration of the memorial, or by which it was affected immediately before the registration of the memorial.
- (5) The Registrar of Titles may dispense with the production of any duplicate certificate of title or any duplicate instrument for the purposes of entering on the duplicate certificate or duplicate instrument any memorandum that would, but for this subsection, be required to be entered under the *Transfer of Land Act 1893* as a result of registering a memorial under subsection (3) or of doing anything else required or permitted by this section.

- (6) If, under subsection (5), the Registrar of Titles dispenses with the production of a duplicate certificate of title or duplicate instrument —
 - (a) the Registrar must endorse the certificate of title to the effect that the memorandum concerned has not been entered on the duplicate certificate of title or the duplicate instrument; and
 - (b) any subsequent dealing in the property has effect as if the memorandum had been entered on the duplicate certificate of title or the duplicate instrument.
- (7) If, under subsection (5), the Registrar of Titles dispenses with the production of a duplicate certificate of title, then, on the application of the registered proprietor, the Registrar may cancel the certificate of title for which the duplicate was issued, and create and register a new certificate of title for the property.
- (8) The Registrar of Titles is not required to obtain the consent or direction of the Commissioner of Titles to perform a function conferred on the Registrar under this section.
- (9) To the extent that a provision of this section relating to any property is inconsistent with the *Transfer of Land Act 1983*, the provision prevails, but this section does not otherwise affect the operation of that Act in relation to the property.

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